

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MASSACHUSETTS

CIVIL ACTION NO. 2003-CV-11192-JLA

NEAL OSOFSKY,
Plaintiff

V.

SEARS, ROEBUCK & CO.,
Defendant

**ORDER ON
PLAINTIFF'S MOTION FOR ATTORNEYS' FEES**

ALEXANDER, M.J.

After consideration of all of the parties' written submissions (including the opposition to the petition), the Court concludes that the hourly rate (\$275.00 per hour) charged by plaintiff's counsel is not unreasonable. In reviewing the bills submitted, however, the Court concludes that there were errors in the calculation of the amount of hours properly recoverable.

First, the entries indicating "no charge" were calculated into the total hours figure presented by counsel. The Court excludes those entries reflecting "no charge" from the fees awarded.

Second, the entries beginning on March 18, 2004 with the entry of .6 hours of legal research regarding the place for deposition were incorrectly calculated (e.g., the .6 hour is billed as \$135.00, a figure lower than the correct amount \$165.00). Similar errors were


found in the remainder of the entries for time billed on March 18th that follow the aforementioned entry through the entry on March 19, 2004 for .3 hours (for drafting the motion for leave to reply.) In determining the fees awarded, the Court has denied the recovery of the "no charge" entries and allowed the recovery of the correct (higher) amounts that should have been presented for the work performed on March 18-19, 2004.

Having made the necessary corrections, the Court awards the plaintiff's counsel 15.4 hours time at the rate of \$275.00 per hour, thereby totaling \$4,235.00 in attorneys' fees for the initial motion to compel. The costs incurred in the motion to compel, \$8.18, are also permitted. In addition, the Court awards attorneys' fees of \$990.00 and \$20.04 in costs that were incurred in the plaintiff's reply brief – a pleading necessitated by the opposition to the original petition. (The Court notes the opposition that did not raise the issue of miscalculation.) In so ordering, the Court finds that the amount of work performed was not unreasonable.

Accordingly, the Court **ALLOWS** the motion for attorneys' fees and costs in the amount of \$5,245.04. Counsel for the defendant shall make payment to plaintiff's counsel within ten (10) days of receipt of this Order.

SO ORDERED.

June 3, 2004


United States Magistrate Judge